

FILED

AUG 12 2015

CITY CLERK

APPLICATION FOR REZONING PETITION
CITY OF TERRE HAUTE

SPECIAL ORDINANCE NO. 20-2015

COMMON ADDRESS OF LOTS TO BE REZONED:

999 Walnut St.
Terre Haute, IN 47807

REZONE FROM: Restricted Central Business District
(C-4)

REZONE TO: Light Industry District (M-1)

PROPOSED USE: Masonry design, construction and
restoration business

PROPERTY OWNER: Fuson L.L.C.

ADDRESS OF OWNER: 4325 S US Hwy 41 South
Terre Haute, IN 47802

PHONE NO. OF OWNER: (812) 232-2364

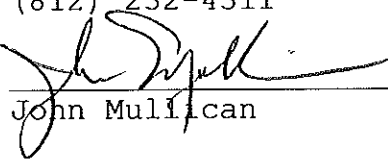
ATTORNEY REPRESENTING OWNER:
Jeffrey A. Lewellyn
Attorney at Law, #15216-34

ADDRESS OF ATTORNEY: Wilkinson, Goeller, Modesitt,
Wilkinson & Drummy, LLP
333 Ohio St.,
Terre Haute, IN 47807

PHONE NO. OF ATTORNEY: (812) 232-4311

FOR INFORMATION CONTACT: Attorney, Jeffrey A. Lewellyn
(812) 232-4311

COUNCIL SPONSOR:


John Mulligan

Copy of Site Plan Must Accompany This Application.

Site Plan

Note: This page not attached to Application.
(Plan Should Be To Scale and Show North Direction, Property Boundaries, Adjacent Alleys and Streets, Location of All Structures, Buildings, Utilities and Easement.)

FILED

AUG 07 2015

CITY CLERK

SPECIAL ORDINANCE FOR A REZONING
SPECIAL ORDINANCE NO. 20 - 2015
COMMON COUNCIL OF THE CITY OF TERRE HAUTE, STATE OF INDIANA

An Ordinance Amending Chapter 10, Article 2, of the Municipal Code, designated as "Comprehensive Zoning Ordinance for Terre Haute, Indiana".

SECTION I. BE IT ORDAINED by the Common Council of the City of Terre Haute, Indiana, That Chapter 10, Article 2 of the City Code of Terre Haute, designated as "Comprehensive Zoning Ordinance for Terre Haute, Indiana" and Division 4, Section 10.121 thereof, District Maps, be, and the same is hereby amended to include as follows:

"That the following described real estate situated in the City of Terre Haute, County of Vigo, State of Indiana, to wit:

See Exhibit A attached hereto and incorporated herein.

Subject to covenants, conditions, restrictions, easements, rights-of-way and other matters of record affecting title.

Commonly known as: 999 Walnut St.
Terre Haute, IN 47807


be and the same is, hereby established as a **(M-1) Light Industry District**, together with all rights and privileges that may inure to said real estate and owners thereof by virtue of the law in such cases provided, subject to all limitations and restrictions imposed thereon by deed or otherwise."

SECTION II. WHEREAS, an emergency exists for the immediate taking effect of this Ordinance, the same shall be in full force and effect from and after its passage by the Common Council of Terre Haute, and its approval by the Mayor and publication as required by law.

Presented by Council Member:


John Mullican

Passed in Open Council this 10th day of September 2015.


John Mulligan, President
Common Council of
City of Terre Haute, Indiana


ATTEST:


Charles P. Hanley, City Clerk

Presented by me to the Mayor of the City of Terre Haute this 11th
day of September, 2015.


Charles P. Hanley, City Clerk

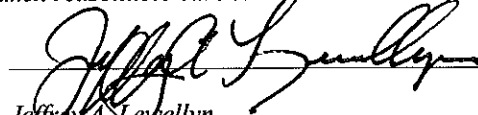
Approved by me, the Mayor of the City of Terre Haute, this 11th
day of SEPTEMBER, 2015.


Duke Bennett, Mayor,
City of Terre Haute, Indiana

ATTEST:


Charles P. Hanley, City Clerk

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.


Jeffrey A. Lewellyn

This instrument prepared by: Jeffrey A. Lewellyn, Attorney,
333 Ohio Street, Terre Haute, IN 47807.

EXHIBIT A

All that part of the following described real estate lying South of the South line of Walnut Street:

A part of the South West quarter of Section 22, Township 12 North, Range 9 West, described as follows:

Beginning at the intersection of the south line of Wabash Avenue and the East line of the Chicago & Eastern Illinois Railroad right of way; said point lying thirty-five (35) feet East of and perpendicular to the centerline of said railroad and one hundred sixty-two and ninety-seven hundredths (162.97) feet; bearing South seventy-eight degrees thirty minutes (78.30') West of the intersection of the West line of Rose's Subdivision of forty-four (44) acres and two (2) rods as per record Plat Book 1, page 79, records of Recorder, Vigo County, Indiana, and the South line of said Wabash Avenue as plotted and laid out in the City of Terre Haute, Vigo County, Indiana; thence North seventy-eight degrees thirty minutes (78.30') East one hundred sixty-two and ninety-seven hundredths (162.97) feet along and with the South line of Wabash Ave.; thence South along the above mentioned West line of Rose's Subdivision one thousand four hundred twenty-three and eighty-five hundredths (1,423.85) feet to a point in the east line of a thirty-five (35) foot right of way of said Railroad; thence Northerly parallel to and thirty-five (35) feet right of the centerline of said Railroad to the place of beginning, containing four and ten hundredths (4.10) acres more or less; subject to all streets and highways and also subject to the rights of the Public, if any, in and to the East twenty (20) feet thereof.

PETITION TO REZONE REAL PROPERTY

TO: THE PRESIDENT AND MEMBERS OF THE COMMON COUNCIL OF THE CITY
OF TERRE HAUTE, INDIANA:

and THE PRESIDENT AND MEMBERS OF THE AREA PLAN COMMISSION
OF VIGO COUNTY, INDIANA:

LADIES AND GENTLEMEN:

The undersigned, **Fuson L.L.C.**, respectively submits this petition to rezone the following described real estate in the City of Terre Haute, County of Vigo, State of Indiana, to-wit:

See attached Exhibit A, legal description.

Subject to covenants, conditions, restrictions, easements, rights-of-way and other matters of record affecting title.

Commonly known as: 999 Walnut St.
Terre Haute, IN 47807

Your Petitioner is informed and believes that in accordance with Chapter 10, Article 2, of the Municipal Code, designated as "Comprehensive Zoning Ordinance for Terre Haute, Indiana" the above described real estate is now zoned as (C-4) Restricted Central Business District.

Your Petitioner would respectively state that the real property is approximately 0.58 acres of land with an approximately 5600 sq. ft. storage building that is used by Petitioner relating to its automotive business. Your Petitioner intends to lease this property for develop and use by a by a masonry design, construction and restoration business, which would include uses as office space, material storage, equipment storage, meeting place for employees prior to going to various job sites and, manufacturing of small decorative masonry accessory items, such as counter tops for kitchens.

Your Petitioner requests that the real estate described herein shall be zoned as a (M-1) Light Industry District. Your Petitioner would allege that this change in zoning and use would not alter the general characteristics of this neighborhood.

Your Petitioner would respectively show the proposed change would not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood.

WHEREFORE, your Petitioner respectfully requests that the Area Plan Commission of Vigo County and the Common Council of the City of Terre Haute, Indiana, favorably consider the passage of a Special Ordinance amending the Comprehensive Zoning Ordinance of the city of Terre Haute, Indiana, Chapter 10, Article 2, of the Municipal Code, designated as "Comprehensive Zoning Ordinance for Terre Haute, Indiana", and declaring the above-described real estate to be part of the (M-1) Light Industry District of the City of Terre Haute, Indiana, and entitled to the rights and benefits that may accrue to the subject real estate and the owners thereof by virtue of the new zoning designation subject to all limitations imposed by deed or otherwise.

IN WITNESS WHEREOF, this Petition has been duly executed on this 7th day of August, 2015.

Fuson, L.L.C.

By: 

Mark J. Fuson,
Managing Member

Petitioner: Fuson, L.L.C.
4325 S US Hwy 41 South,
Terre Haute, IN 47802

Prepared By: Jeffrey A. Lewellyn, No. 15216-34
ATTORNEY FOR PETITIONER
Wilkinson Goeller Modesitt
Wilkinson & Drummy, LLP
333 Ohio Street
Terre Haute, Indiana 47807
Phone: (812) 232-4311

EXHIBIT A

All that part of the following described real estate lying South of the South line of Walnut Street:

A part of the South West quarter of Section 22, Township 12 North, Range 9 West, described as follows:

Beginning at the intersection of the south line of Wabash Avenue and the East line of the Chicago & Eastern Illinois Railroad right of way; said point lying thirty-five (35) feet East of and perpendicular to the centerline of said railroad and one hundred sixty-two and ninety-seven hundredths (162.97) feet; bearing South seventy-eight degrees thirty minutes (78.30') West of the intersection of the West line of Rose's Subdivision of forty-four (44) acres and two (2) rods as per record Plat Book 1, page 79, records of Recorder, Vigo County, Indiana, and the South line of said Wabash Avenue as plotted and laid out in the City of Terre Haute, Vigo County, Indiana; thence North seventy-eight degrees thirty minutes (78.30') East one hundred sixty-two and ninety-seven hundredths (162.97) feet along and with the South line of Wabash Ave.; thence South along the above mentioned West line of Rose's Subdivision one thousand four hundred twenty-three and eighty-five hundredths (1,423.85) feet to a point in the east line of a thirty-five (35) foot right of way of said Railroad; thence Northerly parallel to and thirty-five (35) feet right of the centerline of said Railroad to the place of beginning, containing four and ten hundredths (4.10) acres more or less; subject to all streets and highways and also subject to the rights of the Public, if any, in and to the East twenty (20) feet thereof.



Overview



Legend

- Corporate Limits
- Political Township
- Sections
- Blocks
- Parcels
- Road Centerlines

Parcel ID 84-06-22-384-001.000-002
 Sec/Twp/Rng n/a
 Property Address 999 WALNUT ST
 TERRE HAUTE

Alternate ID 118-06-22-384-001
 Class Commercial Garage
 Acreage 0.58

Owner Address FUSON LLC
 4325 S US HWY 41 SOUTH
 TERRE HAUTE, IN 47802

District 002 HARRISON
 Brief Tax Description ROSES SUB OF 44A 2 RDS WALNUT TO POPLAR
 D- 399/420 22-12-9 .580 AC
 (Note: Not to be used on legal documents)

Date created: 8/6/2015
 Last Data Upload: 8/6/2015 2:39:31 AM

AFFIDAVIT OF OWNERSHIP AND CONSENT

COMES NOW Affiant, Mark J. Fuson, Managing Member, for Fuson, L.L.C., and affirms under penalty of law that Fuson, L.L.C. is the owner of record of the property located at **999 Walnut St., Terre Haute, IN 47807**, for which a rezoning is requested and attached hereto is a copy of the deed evidencing such ownership. Further, on behalf of Fuson, L.L.C., I hereby consent to the rezoning as requested by Fuson, L.L.C. to rezone the property to allow for the uses within **(M-1) Light Industry District**.

I affirm under penalty of perjury, that the foregoing representations are true.

Fuson, L.L.C.

By: 
Mark J. Fuson, Managing Member

STATE OF INDIANA)
 :SS
COUNTY OF VIGO)

Personally appeared before me, a Notary Public in and for said County and State, **Mark J. Fuson, Managing Member**, who acknowledged the execution of the above and foregoing Affidavit of Ownership and Consent, after being duly sworn upon his oath and after having read this Affidavit.

WITNESS my hand and Notarial Seal this 7th day of August, 2015.

My commission expires:
May 11, 2023

Kelley A. Taladay
Kelley A. Taladay, Notary Public
Resident of Vigo County, Indiana



DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer

EXEMPT FROM DISCLOSURE FEE

SEP 15 2014

Jessie M. Spence
VIGO COUNTY AUDITOR

2014011633 CORP WD \$20.00
09/15/2014 02:43:55P 3 PGS
NANCY S. ALLSUP
VIGO County Recorder IN
Recorded as Presented

CORPORATE WARRANTY DEED

THIS INDENTURE WITNESSETH, That Fuson Automotive, Inc. f/k/a Esten Fuson Cadillac & Pontiac, Inc. (sometimes referred to as Esten Fuson Cadillac and Pontiac, Inc.), "Grantor," a corporation organized and existing under the laws of the State of Indiana, **CONVEYS AND WARRANTS** to Fuson, L.L.C., "Grantee," an Indiana limited liability company, for the sum of One and 00/100 Dollars (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate located in Vigo County, in the State of Indiana:

All that part of the following described real estate lying South of the South line of Walnut Street:

A part of the South West quarter of Section 22, Township 12 North, Range 9 West, described as follows:

Beginning at the intersection of the south line of Wabash Avenue and the East line of the Chicago & Eastern Illinois Railroad right of way; said point lying thirty-five (35) feet East of and perpendicular to the centerline of said railroad and one hundred sixty-two and ninety-seven hundredths (162.97) feet; bearing South seventy-eight degrees thirty minutes (78.30') West of the intersection of the West line of Rose's Subdivision of forty-four (44) acres and two (2) rods as per record Plat Book 1, page 79, records of Recorder, Vigo County, Indiana, and the South line of said Wabash Avenue as plotted and laid out in the City of Terre Haute, Vigo County, Indiana; thence North seventy-eight degrees thirty minutes (78.30') East one hundred sixty-two and ninety-seven hundredths (162.97) feet along and with the South line of Wabash Ave.; thence South along the above mentioned West line of Rose's Subdivision one thousand four hundred twenty-three and eighty-five hundredths (1,423.85) feet to a point in the east line of a thirty-five (35) foot right of way of said Railroad; thence Northerly parallel to and thirty-five (35) feet right of the centerline of said Railroad to the place of beginning, containing four and ten hundredths (4.10) acres more or less;

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subject to all streets and highways and also subject to the rights of the Public, if any, in and to the East twenty (20) feet thereof.

(Commonly known as 999 Walnut Street, Terre Haute, Indiana 47807.)

Subject to all general real estate taxes prorated to the date of this indenture and all subsequent taxes.

Subject to all conveyances or reservations of mineral rights, covenants, conditions, restrictions, easements, leases, encumbrances, and all other matters of record.

This conveyance is not a special corporate transaction within the meaning of that term as used in the Indiana Corporation Act and amendments thereto.

The undersigned person executing this deed on behalf of Grantor represents and certifies that he is a duly elected officer of Grantor and has been fully empowered, by proper corporate resolution of the Board of Directors of Grantor, to execute and deliver this deed; that Grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this 9th day of September, 2014.

FUSON AUTOMOTIVE, INC.

By: Mark J. Fuson
Mark J. Fuson, President

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

Before me, a Notary Public in and for said County and State, personally appeared Mark J. Fuson, the President of Fuson Automotive, Inc. f/k/a Esten Fuson Cadillac & Pontiac, Inc.

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(sometimes referred to as Esten Fuson Cadillac and Pontiac, Inc.), who acknowledged execution of the foregoing Corporate Warranty Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 9 day of September, 2014.

Kimberly A. Norr
Notary Public

Kimberly A. Norr
Printed Name

My Commission Expires: 10-8-2016 My County of Residence: Vigo

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Craig M. McKee
Craig M. McKee

This instrument prepared by: Jeffrey A. Lewellyn, Attorney at Law
333 Ohio Street, Terre Haute, IN 47807

Mail tax statements to Grantee: 4325 US Highway 41 South, Terre Haute, IN 47802



Receipt

The following was paid to the City of Terre Haute, Controller's Office.

Date: August 7, 2015

Name: Wilkenson, Goeller, Drummy

Reason: Rezoning Petition \$20.00

Rezoning Filing \$25.00

Jason - Rezoning

TERRE HAUTE, IN
PAID

Cash: _____

AUG 07 2015

Check: \$45.00 CK# 0091074

CONTROLLER

Credit: _____

Total: \$45.00

Received By: M. Dowell/BE



TERRE HAUTE
A LEVEL ABOVE

Area Planning Department For Vigo County

159 Oak Street, Terre Haute, Indiana 47807

Telephone: (812) 462-3354

Fax: (812) 234-3248

Terre Haute • West Terre Haute • Riley • Seelyville

FILED

SEP 3 2015

CITY CLERK

DATE: September 3, 2015

REPORT TO THE CITY COUNCIL ON ZONING MAP AMENDMENT

THE VIGO COUNTY AREA PLAN COMMISSION HEREBY GIVES CERTIFICATION TO
SPECIAL ORDINANCE NUMBER #20-15

CERTIFICATION DATE: September 2, 2015

TO: The Honorable Common Council of the City of Terre Haute

Dear Members,

The Vigo County Area Plan Commission offers you the following report and certification on Special Ordinance No.20-15. This Ordinance is a rezoning of the property located at 999 Walnut Street. The Petitioner, Fuson, LLC, petitions the Plan Commission to rezone said real estate from zoning classification C-4, to M-1, Light Industry District for masonry design, construction and restoration business. The Ordinance was published in the Tribune-Star Newspaper in accordance with IC 5-3-1 and Division XIII of the Comprehensive Zoning Ordinance. Further, this ordinance was posted by the City Building Inspection Department in accordance with IC 36-7-4-604(c).

The Area Plan Commission considered Special Ordinance No. 20-15 at a public meeting and hearing held Wednesday, September 2, 2015. Remonstrators were not present. At this meeting, a quorum was present throughout the meeting pursuant to IC 36-7-4-301, and the Area Plan Commission took official action on Special Ordinance No. 20-15 as required by IC 36-7-4-302. The Area Plan Commission of Vigo County now hereby attaches certification to Special Ordinance No.20-15 as required by IC 36-7-4-401(a)(7) and IC 36-7-4-605(c).

Therefore, Area Plan Commission's certified recommendation on Special Ordinance No. 20-15 was FAVORABLE WITH THE FOLLOWING CONDITION: 1) A site plan must be submitted showing adequate availability of parking on site.

A handwritten signature in black ink, appearing to read "Fred L. Wilson".

Fred L. Wilson, President

A handwritten signature in black ink, appearing to read "Darren Maher".

Darren Maher, Executive Director

Received this 3rd day of September, 2015

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #20-15
Date: September 2015

Doc: # 59
Page 1 of 4

APPLICATION INFORMATION

Petitioner: Fuson LLC.

Owner: Same

Representative: Jeffrey Lewellyn

Proposed Use: Masonry design, construction and restoration business

Proposed Zoning: M-1, Light Industrial District

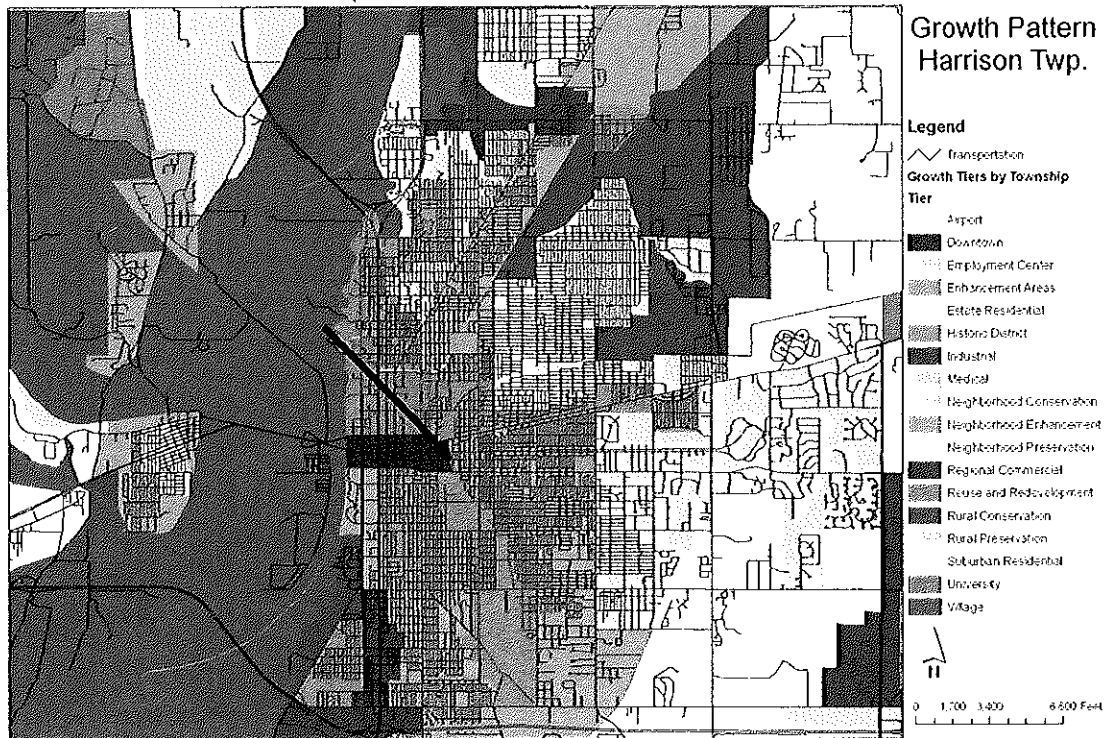
Current Zoning: C-4 Restricted Central Business District

Location: The property is located on the corner of Walnut St and 10 ½ St. Containing approximately 115 feet of frontage along Walnut St. the primary structure is located just past the rail road tracks on the south side of Walnut St.

Common Address: 999 Walnut St., Terre Haute, IN 47807

COMPREHENSIVE PLAN GUIDANCE

Service Area: The City of Terre Haute



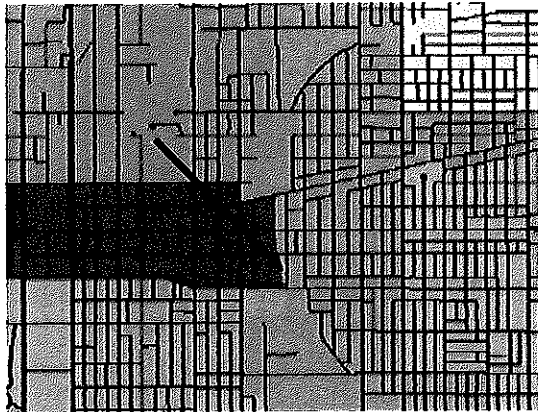
STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #20-15

Doc: # 59

Date: September 2015

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Guiding Policies: Reuse and Redevelopment

Reuse and Redevelopment Areas

These are areas that offer potential future reuse and redevelopment potential. These areas are a result of underutilization of land relative to potential development. Brownfield and blighted categorization establishes the need to apply policies established for these areas.

Additional policies for Reuse and Redevelopment Areas include:

- Incentives to be provided to support redevelopment.
- Density bonuses may be appropriate to support redevelopment
- Sponsor the development of redevelopment plans
- All policies from Neighborhood Enhancement Areas

Street Access: Walnut St and 10 ½ St.

Dev. Priority: Reinvestment and rehabilitation are a high priority.

ZONING COMPATIBILITY

Sur. Zones and Uses: North – M-2, C-4, C-2

East – C-5, C-2

South – M-2, C-5

West – M-2 C-8

Character of Area: The petitioned property is located just east of the Downtown District.

ZONING REGULATIONS

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #20-15

Doc: # 59

Date: September 2015

Page 3 of 4

It is the purpose of this classification to provide for complete separation of residential and commercial areas, from industrial areas for the mutual protection of both industrial and residential, and commercial uses. It is recognized that for industrial growth, a reasonable excess of quality land must be held in exclusive reserve for industrial expansion. In the granting of special uses, this goal must be paramount in the consideration thereof and special uses not clearly of manufacturing or industrial nature must be incidental to an established industrial facility.

The Light Industrial zone classification provides for additional sites in a more densely developed area. It provides for those industries which are more compatible with densely developed, contiguous, residential and commercial uses and which can readily meet the industrial performance standards as contained in Sec. 10-143.

Uses, Permitted - M-1 Light Industry District.

The following uses are permitted, provided that all business, servicing, or processing shall take place within completely enclosed buildings, unless otherwise indicated hereinafter and except for establishments of the "drive-in" type offering goods or services directly to customers waiting in parked motor vehicles and off-street loading and parking as regulated in Sec. 10-137. Any production, processing, cleaning, servicing, testing, repair, or storage of material, goods, or products which shall conform with the performance standards set forth in Sec. 10-143 (except such uses as are specifically excluded), and which shall not be injurious or offensive to the occupants of adjacent premises by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic and noxious materials, odors, fire or explosive hazards, glare or heat. Within three hundred feet (300') of a Residence District, all storage except of motor vehicles, shall be within completely enclosed buildings or may be located out-of-doors if it is effectively screened by a solid wall or fence (including solid entrance and exit gates) as specified in Sec. 10-172 e. for junkyards.

The following is a list of approved uses of an M-1 zoning: Automobile laundries. (3) Building materials sales, (4) Contractor or construction office, shops, and yards; such as: (A) Building. (B) Cement. (C) Electrical. (D) Heating, ventilating and air conditioning. (E) Roofing. (F) Masonry. (G) painting. (H) Plumbing. (I) Refrigeration. (5) Fuel and ice sales, if located in completely enclosed buildings. (6) Garages and parking lots, for motor vehicles. (7) Public utility and public service uses, including: (A) Bus terminals, bus garages, bus lots. (B) Electric sub-stations. (C) Fire stations. (D) Gas utility service sub-stations. (E) Police stations. (F) Railroad passenger stations. (G) Railroad rights-of-way. (H) Telephone exchanges, microwave relay towers, and water filtration plants. (I) Water filtration plants. (J) Water pumping stations. (K) Sewage or storm water pumping stations. (8) Signs as regulated in Sec. 10-141. (9) Trade schools. (10) Accessory uses.

FINDINGS and RECOMMENDATION

Staff Findings:

Originally built in 1966 the building on site is afforded privileges under sec 10-167 Exempted Uses, Buildings and Structures. As such it is subject to Sec 10-171 Change of Use.

The M-1 zoning at this location, just outside the Downtown District, does not present a natural fit. However, 999 Walnut St. is 500 or more feet from any residential zones, immediately adjacent to an M-2 zoning and approximately 160 ft. from another M-1 zoning.

Some attention to detail must be made when occupying the site for the proposed use. As outlined in 10-225(c.)(1) Any production, processing, cleaning, servicing, testing, repair, or storage of material, goods, or products shall conform with the performance standards set forth in Sec. 10-143 (except such uses as are specifically excluded), and shall not be injurious or offensive to the occupants of adjacent premises by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic and noxious materials, odors, fire or explosive hazards, glare or heat.

Parking requirements are set by Table 4 and mandate 3 spaces for every 1000 square feet of gross floor area plus an adequate number to allow for one space per company vehicle.

Recommendation: Based on the above findings Staff offers a Favorable Recommendation with the following condition:

1. A site plan be submitted showing adequate availability of parking on site.